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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES FREDERICK FENDER,

Defendant and Appellant.

B155186

(Los Angeles County  
Super. Ct. No. YA033365)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
William Hollingsworth, Jr., Judge. Reversed and remanded with directions.

Cara DeVito, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney  
General, Pamela C. Hamanaka, Senior Assistant Attorney General, Michael C. Keller and  
Alene M. Games, Deputy Attorneys General, for Plaintiff and Respondent.

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James Frederick Fender appeals the judgment entered following plea of guilty to 14 counts of lewd act with a child under the age of 14 years (counts 1-14), one count of unlawful sexual intercourse with a minor (count 19) and one count of possession of child pornography, a misdemeanor (count 20). (Pen. Code, §§ 288, subd. (a), 261.5, subd. (c), 311.11, subd. (a).) The trial court granted Fender a certificate of probable cause permitting him to raise the statute of limitations as a defense on appeal and sentenced Fender to consecutive terms as determined by the sentencing law that existed at the time of the offenses. The Department of Corrections subsequently computed Fender's term to be 22 years in state prison.

All of the counts, except count 20, were alleged to have occurred between 1965 and 1975 and were prosecuted under Penal Code section 803, subdivision (g). That statute recently was held unconstitutional in *Stogner v. California* (June 26, 2003, No. 01-1757) --- U.S. --- [2003 WL 21467073]. Based on *Stogner*, the People concede in a letter brief dated July 14, 2003, that Fender's conviction on all of the counts, except count 20, must be reversed by reason of *Stogner* and that the order for restitution must be stricken. As to count 20, the People concede it is appropriate to remand the case to the trial court to allow Fender to withdraw his plea to count 20, if he desires to do so. The Attorney General further waives oral argument and indicates no objection to immediate issuance of the remittitur.

Fender, in a letter brief dated July 22, 2003, agreed to submit the matter on the briefs filed, including the Attorney General's letter brief, and joins the Attorney General's recommended disposition of the case, including immediate issuance of the remittitur.

Based on the agreement of the parties, which appears appropriate in light of *Stogner*, and oral argument having been waived, the judgment is reversed as to counts 1 through 14 and count 19, and, as to count 20, the matter is remanded to permit Fender to withdraw his guilty plea if he desires to do so. Finally, based on the agreement of the

parties, the clerk of this court is directed to issue the remittitur immediately after filing this opinion. (Cal. Rules of Court, rule 14(b).)

**DISPOSITION**

The judgment as to counts 1 through 14, and count 19 is reversed; as to count 20, the matter is remanded to the trial court with directions to permit Fender to withdraw his plea of not guilty, if he desires to do so. The clerk of this court shall issue the remittitur in this case immediately after filing the instant opinion.

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KLEIN, P.J.

We concur:

CROSKEY, J.

ALDRICH, J.